

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KOLAWOLE SMITH,

Plaintiff,

V.

ILLINOIS STATE POLICE, *et al.*,

Defendants.

Court No. 08 CV 2414

The Hon. Charles R. Norgle
Magistrate Judge Ashman

STATE DEFENDANTS' RULE 12(b)(1) and 12(b)(6) MOTION TO DISMISS

Defendants, the Illinois State Police (“ISP”), Wilber Norrey, Chester Montgomery, Veronica Harris, and Akilah Marshall (“Chicago State University Police (“CSUP”) Defendants”), hereinafter, collectively referred to as “State Defendants,” by their attorney, LISA MADIGAN, Illinois Attorney General, hereby move this Honorable Court to dismiss Plaintiff’s claims against them pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. In support thereof, the State Defendants state as follows:

1. The ISP must be dismissed as a defendant because it is not a “person” subject to suit under 42 U.S.C. § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 (1989).

2. The Eleventh Amendment bars Plaintiff's Section 1983 claims for damages against the State Defendants. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Alabama v. Pugh*, 438 U.S. 781 (1978); *Stevens v. Umstead*, 131 F.3d 697, 706 (7th Cir.1997).

3. Plaintiff's Complaint must be dismissed because it fails to state a claim upon which relief may be granted and fails to comport with Federal Rules of Civil Procedure 8(a), 8(e), and 10(b).

4. Plaintiff's state law claims are barred by sovereign immunity and may only be pursued in the Illinois Court of Claims. *See Richman v. Sheahan*, 270 F.3d 430, 441 (7th Cir. 2001); *Benning v. Bd. of Regents*, 928 F.2d 775, 778-79 (7th Cir. 1991); 705 ILCS 505/8(d).

5. The CSUP Defendants are entitled to public official immunity for Plaintiff's state law claims against them. *Larson v. Darnell*, 113 Ill.App.3d 975, 976 (3rd Dist. 1983).

6. In the event the Court dismisses Plaintiff's federal claims, the Court should decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3). *See also Wright v. Associated Ins. Cos. Inc.*, 29 F.3d 1244, 1250 (7th Cir. 1994).

WHEREFORE, for the foregoing reasons, Defendants, the Illinois State Police, Wilber Norrey, Chester Montgomery, Veronica Harris, and Akilah Marshall respectfully request that this Honorable Court grant their Motion to Dismiss and dismiss Plaintiff's claims against them with prejudice and in their entirety.

Date: August 12, 2008

LISA MADIGAN
Illinois Attorney General

Respectfully submitted,

/s/ Kathleen L. Ford
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2008, I electronically filed the above document with the Clerk of the Court using the CM/ECF system. I further certify that on the same date, a copy of the foregoing was mailed to Plaintiff, Kolawole Smith, at the following address: 433 W. Harrison, P.O. Box 5290, Chicago, Illinois 60680-5290.

/s/ Kathleen L. Ford